srp.

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7159 OF 2006.

Kiran Tiwari. ..Petitioner.

Versus.

The State of Maharashtra & Others..Respondents.

Mr. S. M. Oak for the petitioner.

Mr. R. S. Apte for the respondent no.2.

Mr. C. R. Sonawane A.G.P. for the State.

CORAM: S. B. MHASE & D.G.KARNIK,JJ.

DATE: AUGUST 9, 2007.

P.C.

1. Heard counsel for the parties.

2. The petitioner challenges the order dated 12th July 2006 passed by the respondent no.2 rejecting the permission for construction of the 6th floor. The impugned order is apparently passed under section 45 of the Maharashtra Regional Town Planning Act. (for short, "the MRTP Act".) The order is appealable under section 47 of the MRTP Act. Under the circumstances it would be inappropriate to entertain the petition, especially when the petition involves the disputes questions of facts.

3. The order ex-facie states that the permission for allowing the use of TDR was refused on

a ground that the plot falls in low-density belt. Learned counsel for the petitioner states that the land does not fall in low density belt as it is beyond the required distance from the place of chemicals storage. The distance between the chemicals storage place is wrongly measured inasmuch as the distance has to be calculated from the actual place of chemical storage containers and not the Compound Wall of the property where the chemicals are stored. The petition does not disclose the distance between the petitioner's property and the chemicals storage containers. In any event the computation of distance itself is a disputed question of fact as the respondent does not admit that the distance was erroneously computed. The disputed questions of fact can very well be decided in the statutory appeal.

4. Learned counsel for the petitioner submits that the remedy by way of an appeal had become time barred when the writ petition was filed, and therefore the remedy by way of appeal is not available. Only because the petitioner did not avail the remedy and allowed it to be time barred cannot be a ground to entertain writ petition. In the circumstances the petition is rejected summarily.

(D.G.KARNIK, J.) **(S.B.MHASE, J.)**